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| 10/582,447      | 05/18/2007  | Alastair Edwin McAuley | FPHCR.111NP         | 6959             |

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| EXAMINER |
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YOUNG, RACHEL T

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| ART UNIT | PAPER NUMBER |
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3771

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01/19/2012

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/582,447 | <b>Applicant(s)</b><br>MCAULEY ET AL. |  |
|                              | <b>Examiner</b><br>RACHEL YOUNG      | <b>Art Unit</b><br>3771               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1-7, 11-14 and 17-22 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-7, 11-14 and 17-22 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/17/11</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Amendment***

1. This office action is responsive to the amendment filed on 8/3/10. As directed by the amendment: claims 1-4, 11 and 14 have been amended, claims 8-10 and 15-16 have been canceled, and new claims 19-22 have been added. Thus, claims 1-7, 11-14 and 17-22 are presently pending in the application.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: Claim 1 recites on line 3, "an inner cushion body having least one outer", which should be corrected to --an inner cushion body having at least one outer--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**5. Claims 1-3, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon et al. (2003/0217746) in view of Ouellette et al. (6,883,177).**

Regarding claims 1-2, 5, in figure 19 Gradon discloses a cushion 1104 having an inner cushion body 1110 having an outer surface; and an outer sealing sheath (1112, Page 3, ¶ 56), that engages around the inner cushion body, and the outer sealing sheath deforms substantially independently of the inner cushion body (there is a gap between the sheath and the inner cushion that allows the sheath to deform and it is also of flexible material because it is stretched over the inner cushion (Page 3, ¶ 58). Gradon is silent regarding an outer cover that is applied on to and adhered to all outer surfaces of the inner cushion body, however Ouelette teaches a knee pad with an outer cover (Col. 5, ll. 22-23) that is made of polyurethane (Col. 5, ll. 22-23). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gradon's inner cushion body to include an outer cover that is made of polyurethane, as taught by Ouellette, for the purpose of providing protection to the inner cushion (Col. 5, ll. 22-23).

Regarding claim 3, the modified Gradon discloses that the inner cushion body is formed in polyurethane foam (Page 3, ¶ 56, ll. 3-4)

Regarding claim 7, Gradon discloses that the inner cushion body includes an attachment (108, 122, 120, Fig. 2) to engage a mask.

**6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon/Ouellette, as applied to claim 1 above, in further view of Fenner, Sr. (5,031,261).**

Regarding claim 4, the modified Gradon discloses that the outer cover is formed of polyurethane, but is silent regarding that it is polyurethane film. However, Fenner teaches protecting a polyurethane foam pad mattress with a protective sleeve cover made of polyurethane film (Col. 5, ll. 28-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Gradon's outer polyurethane layer with a polyurethane film, as taught by Fenner, for the purpose of protecting the inner cushion without adding too much bulk.

**7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon/Ouellette, as applied to claim 1 above, in further view of Colvin et al. (5,518,802).**

Regarding claim 6, Gradon discloses the inner cushion body, but does not explicitly recite that the cushion body is assembled from more than one moulded component. However, it appears that Gradon's inner cushion in figure 19 is assembled from more than one moulded component as evident by the three lines along the bottom of the inner cushion and line on the top right edge of the inner cushion. The technique

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of moulding components together is also well known in the art. Additionally, Colvin teaches a cushion body (that can be used in garments to increase comfort, abstract) that is assembled from more than one moulded component (Col. 7, ll. 27-29).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gradon's inner cushion body with a cushion body made from more than one moulded component, as taught by Colvin, for the purpose of providing greater strength in the cushion structure (Col. 7, ll. 29).

**8. Claims 11-14, 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon in view of Colvin and Ouellette in view of Fenner.**

Regarding claims 11-13, 19 and 22, Gradon discloses a mask (2, Fig. 1) to deliver gas to a patient (Page 1, ¶ 2, ll. 5-6) including a cushion body (1104, Fig. 18) having an outer face. Gradon is silent regarding that the cushion body has a plurality of adjacent voids, and that each of the voids has a hexagonal cross section, and that each of the voids has a square cross section. However, Colvin teaches a cushion (that can be used in garments to increase comfort, abstract) with a plurality of adjacent voids (27, Fig. 1), and each of the voids has a hexagonal cross section (Fig. 1, honeycomb structure), and each of the voids has a square cross section (Fig. 3A). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gradon's cushion body with a cushion body having a plurality of adjacent voids throughout the entire cushion, and each of the voids has a hexagonal cross section, and each of the voids has a square cross section, as taught by Colvin, for

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the purpose of providing comfort to the user (abstract). Gradon is silent regarding an outer cover that is applied on to and adhered to all outer surfaces of the inner cushion body, however Ouelette teaches a knee pad with an outer cover (Col. 5, ll. 22-23) that is made of polyurethane (Col. 5, ll. 22-23). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gradon's inner cushion body to include an outer cover that is made of polyurethane, as taught by Ouellette, for the purpose of providing protection to the inner cushion (Col. 5, ll. 22-23). The modified Gradon discloses that the outer cover is formed of polyurethane, but is silent regarding that it is polyurethane film. However, Fenner teaches protecting a polyurethane foam pad mattress with a protective sleeve cover made of polyurethane film (Col. 5, ll. 28-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Gradon's outer polyurethane layer with a polyurethane film, as taught by Fenner, for the purpose of protecting the inner cushion without adding too much bulk.

Regarding claim 14, Gradon discloses a cushion body (1104, Fig. 18) having an outer sealing sheath (1112, Fig. 19, Page 3, ¶ 56, ll. 2-3).

Regarding claim 20, the modified Gradon discloses that the outer film (polyurethane, Ouellette) is formed from the same elemental material as the cushion body (polyurethane Page 3, para 56, ll. 3-4).

**9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon, Colvin, Ouellette and Fenner, as applied to claim 11 above, in further view of Piletti-Reyes (2004/0118412).**

Regarding claim 21, the modified Gradon discloses an outer film of polyurethane, but is silent regarding that the outer film is formed from silicone. However, Piletti-Reyes teaches a polyurethane foam pad coated with silicone (Page 3, para 51). It would have been obvious to one of ordinary skill in the art to modify the modified Gradon's film with silicone, as taught by Piletti-Reyes, for the purpose of providing a different level of protection to the pad depending on the length of time that the mask will be used.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-7, 11-14 and 19-22 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-fri 8 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RACHEL T YOUNG/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771